A

Sathish Kumar Ayyaswamy & Anor v Peeran Syed Mohamed Syed Mahaboob

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-02(IM)(NCvC)-954–06 OF 2023
MARIANA YAHYA, HASHIM HAMZAH JJCA AND FAIZAH JAMALUDIN J
3 JANUARY 2025

C

Civil Procedure — Striking out — Statement of claim ('SOC') — O 18 r 19(1)(a) of the Rules of Court 2012 ('the ROC') — Whether High Court judge was plainly wrong in striking out SOC after considering merits of case and holding D *SOC did not disclose reasonable cause of action — Whether court could not consider any evidence or merits of the case when dealing with a striking out application under para (1)(a) of O 18 r 19 of the ROC — Whether court could only consider the SOC and determine whether on the face of it any reasonable cause of action against defendant was disclosed*

E

Two companies, PCSB and ATB, were involved in a construction project. The first and second appellants were, respectively, the construction manager and managing director of PCSB whilst the respondent was a director of ATB. Following a meeting between both parties for the processing and payment of F PCSB's claims, the respondent met with the first appellant to discuss an alleged discrepancy relating to an outstanding payment for the project. The first appellant ('A1') contended that when he told the respondent that he had no mandate to discuss payment matters on behalf of PCSB and advised the respondent to discuss the matter directly with the second appellant ('A2'), the G respondent became verbally abusive and slandered both him and A2 ('the impugned words') within sight and earshot of several of PCSB's workers. The incident caused the appellants to sue the respondent for defamation. The respondent applied to strike out the appellants' statement of claim ('SOC') under O 18 r 19(1)(a) of the Rules of Court 2012 on the ground that the SOC H did not disclose any actionable claim based on the impugned words and also did it give specific particulars of third parties to whom the impugned words were allegedly published. The High Court struck out the SOC holding that the appellants' pleadings did not disclose a reasonable cause of action in defamation because: (a) given their natural and ordinary meaning, the I impugned words were merely abusive and nasty words normally uttered in anger and were not defamatory nor exposed the appellants to hatred, ridicule or contempt in the mind of a reasonable man; and (b) the pleadings did not name or identify the specific third parties to whom the impugned words were alleged published. The instant appeal was against the High Court's decision.

Held, allowing the appeal and setting aside the High Court's decision:

(1) The elements necessary to constitute a cause of action in defamation were that the impugned words: (a) were defamatory; (b) referred to the plaintiff; and (c) were published. The facts pleaded in the appellants' statement of claim ('SOC') had pleaded all the said three elements (see paras 20 & 26).

(2) In an application to strike out the SOC under para (1)(a) of O 18 r 19 of the Rules of Court 2012, the court could only consider the SOC on the face of it and could not take into account the merits of the plaintiff's claim or any evidence. Order 18 r 19(2) clearly stated that no evidence was admissible on an application under para (1)(a) of O 18 r 19. The court had to assess the pleadings as a whole and conclude from the face of it that there was no reasonable cause of action and that the action was 'obviously unsustainable' before it could summarily strike out the pleadings (see paras 28 & 54).

(3) On the face of the SOC, the appellants had pleaded that the impugned words were defamatory, that they referred to the appellants and that they were published to third parties. Whether or not the appellants would succeed in proving the facts pleaded depended on the evidence that would be adduced during the trial of the action (see para 33).

(4) The High Court judge was plainly wrong when he undertook a minute analysis of the merits of the appellants' claim and concluded, based solely on the pleadings, that two of the three elements necessary to prove the tort of defamation as pleaded in the SOC were 'unsustainable'. Based on that conclusion, the judge held that there was no reasonable cause of action in defamation against the respondent and struck out the SOC. The judge ought not to have considered the merits of the case (see paras 34 & 55–56).

(5) The High Court judge wrongly concluded that there was no defamation of the appellants since the SOC failed to plead the 'full identities' of the third parties to whom the impugned words were communicated. Where a plaintiff alleged that publication of defamatory words was made to a specific person, the plaintiff must name and identify that person in his pleadings. But where it was alleged that publication was made to a specific group of persons, the plaintiff must plead publication of the defamatory words to the specific group of persons. The plaintiff did not have to plead the names and identities of the persons in the group. In this case, the appellants had pleaded that the impugned words were published to a specific group of persons, namely, the PCSB workers who were in the smoking shed when the respondent allegedly uttered the impugned words. Thus, the requirement to plead publication of the impugned words to a specific group of persons had been satisfied (see paras 47–51).

[Bahasa Malaysia summary

Dua syarikat, iaitu PCSB dan ATB, terlibat dengan projek pembinaan. Perayu pertama dan kedua masing-masing adalah pengurus pembinaan dan pengarah urusan PCSB manakala responden adalah pengarah ATB. Berikutan mesyuarat antara kedua-dua pihak untuk pemprosesan dan pembayaran tuntutan PCSB, responden bertemu dengan perayu pertama untuk membincangkan mengenai percanggahan yang berkaitan dengan bayaran tertunggak untuk projek tersebut. Perayu pertama ('P1') menyatakan bahawa apabila dia memberitahu responden bahawa dia tidak mempunyai mandat untuk membincangkan hal-hal pembayaran bagi pihak PCSB dan menasihati responden untuk membincangkan perkara itu secara langsung dengan perayu kedua ('P2'), responden bertindak kasar dan memfitnah kedua-duanya dan A2 ('kata-kata yang dipertikaikan') yang mana diperhatikan dan didengar oleh beberapa pekerja PCSB. Kejadian itu menyebabkan perayu menyaman responden kerana fitnah. Responden memohon untuk membatalkan pernyataan tuntutan perayu ('PT') di bawah A 18 k 19(1)(a) Kaedah-Kaedah Mahkamah 2012 dengan alasan bahawa PT tidak mendedahkan sebarang tuntutan yang boleh diambil tindakan berdasarkan kata-kata yang dipertikaikan dan juga memberikan butir-butir khusus pihak ketiga yang didakwa diterbitkan. Mahkamah Tinggi membatalkan PT dengan alasan bahawa perayu tidak mendedahkan sebab tindakan yang munasabah untuk tuntutan fitnah kerana: (a) berdasarkan maksud semula jadi dan biasanya, kata-kata yang dipertikaikan hanyalah kata-kata kesat dan jahat yang biasanya diucapkan ketika dalam kemarahan dan ianya tidak bermaksud untuk memfitnah atau mendedahkan perayu kepada kebencian, ejekan atau penghinaan dalam fikiran orang yang munasabah; dan (b) pliding tersebut tidak menamakan atau mengenal pasti pihak ketiga tertentu kepada siapa kata-kata yang dipertikaikan itu didakwa diterbitkan. Rayuan ini atas keputusan Mahkamah Tinggi tersebut.

Diputuskan, membenarkan rayuan dan mengenepikan keputusan Mahkamah Tinggi:

(1) Elemen-elemen yang diperlukan untuk membentuk kausa tindakan dalam tuntutan fitnah tersebut adalah bahawa perkataan yang dipertikaikan: (a) adalah fitnah; (b) merujuk kepada plaintif; dan (c) diterbitkan. Fakta-fakta yang dikemukakan dalam pernyataan tuntutan perayu ('PT') telah memplidkan ketiga-tiga elemen tersebut (lihat perenggan 20 & 26).

(2) Dalam permohonan untuk membatalkan PT di bawah perenggan (1)(a) A 18 k 19 Kaedah-Kaedah Mahkamah 2012, mahkamah hanya boleh mempertimbangkan PT pada dasarnya dan tidak boleh mengambil kira merit tuntutan plaintif atau sebarang keterangan. Aturan 18 k 19 (2) dengan jelas menyatakan bahawa tiada keterangan yang boleh diterima

atas permohonan di bawah perenggan (1)(a) A 18 k 19. Mahkamah seharusnya menilai pliding secara keseluruhan dan membuat kesimpulan atas dasarnya bahawa tiada sebab tindakan yang munasabah dan tindakan itu 'jelas tidak boleh dipertahankan' sebelum boleh membatalkan pliding secara terus (lihat perenggan 28 & 54).

(3) Dalam pliding, perayu telah memplidkan bahawa kata-kata yang dipertikaikan adalah fitnah, yang mana merujuk kepada perayu dan diterbitkan kepada pihak ketiga. Sama ada perayu akan berjaya membuktikan fakta-fakta tersebut bergantung kepada keterangan yang akan dikemukakan semasa perbicaraan kelak (lihat perenggan 33).

(4) Hakim Mahkamah Tinggi jelas terkhilaf apabila melakukan analisis ringkas mengenai merit tuntutan perayu dan memutuskan, berdasarkan pliding semata-mata, iaitu dua daripada tiga elemen yang diperlukan untuk membuktikan tort fitnah seperti yang didakwa dalam PT adalah 'tidak boleh dipertahankan'. Berdasarkan kesimpulan itu, hakim memutuskan bahawa tiada kausa tindakan yang munasabah dalam fitnah terhadap responden dan membatalkan PT tersebut. Hakim tidak sepatutnya mempertimbangkan merit kes itu (lihat perenggan 34 & 55–56).

(5) Hakim Mahkamah Tinggi terkhilaf ketika memutuskan bahawa tiada fitnah terhadap perayu kerana PT gagal memplidkan 'identiti penuh' pihak ketiga yang kepadanya kata-kata yang dipertikaikan itu disampaikan. Sekiranya plaintif mendakwa bahawa penerbitan kata-kata fitnah dibuat kepada orang tertentu, plaintif mesti menamakan dan mengenal pasti orang itu dalam permohonannya. Namun, di dalam kes ini penerbitan dikatakan dibuat kepada kumpulan orang tertentu. Oleh itu, plaintif mestilah memplidkan penerbitan kata-kata fitnah kepada kumpulan orang tertentu. Plaintif tidak perlu memplidkan nama dan identiti orang dalam kumpulan itu. Dalam kes ini, perayu telah memplidkan bahawa kata-kata yang dipertikaikan diterbitkan kepada sekumpulan orang tertentu, iaitu pekerja PCSB yang berada di ruangan merokok ketika responden dikatakan mengucapkan kata-kata yang dipertikaikan. Oleh itu, keperluan untuk memplidkan penerbitan kata-kata yang dipertikaikan kepada kumpulan orang tertentu telah dipenuhi (lihat perenggan 47–51).]

Cases referred to

Abdul Rahim bin Abdul Hamid & Ors v Perdana Merchant Bankers Bhd & Ors [2000] 2 MLJ 417; [2000] 2 CLJ 457, CA (refd)

Abu Samah bin Omar v Zainal bin Montel [2004] 5 MLJ 377; [2003] 1 LNS 501, HC (refd)

Ayob bin Saud v TS Sambanthamurthi [1989] 1 MLJ 315; [1989] 1 CLJ 152, HC (refd)

A *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36; [1993] 4 CLJ 7, SC (refd)
Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal [2011] SGCA 63; [2012] 1 SLR 506, HC (refd)
Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd
B *& Anor* [2014] 4 MLJ 242, CA (refd)
Lee Kok Choy v Leong Keng Woo [2022] SGHC 3; [2022] 4 SLR 1253, HC (refd)
Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor [1996] 1 MLJ 113; [1996] 4 CLJ 716, FC (refd)
C *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173; [1988] 1 CLJ 771, SC (refd)

Legislation referred to

Defamation Act 1957 s 5
D Rules of Court 2012 O 18 rr 7(1), (2), 19(1)(a), (1)(b), (1)(c), (2), O 78 r 3, 3(1)

Appeal from: *Sathish Kumar Ayyaswamy & Anor v Peeran Syed Mohamed Syed Mahaboob* [2023] MLJU 1930 (High Court, Johor Bahru)
E

Mirdhulekha a/p Muralidharan (with Divesh a/l Ramani) (David Gurupatham & Koay) for the appellant.
Rohan Arasoo a/l Jeyabalah (with Tey Siaw Ling and Damia Amani bt Shaiful Bahri) (Harold & Lam Partnership) for the respondent.

F

Faizah Jamaludin J:

INTRODUCTION

G **[1]** This is an appeal by the appellants against the decision of the learned High Court judge on 30 August 2023 where he allowed the respondent's application in encl 9 to strike out the pleadings in the appellants' statement of claim ('SOC') under O 18 r 19(1)(a) and O 78 r 3 of the Rules of Court 2012 ('the ROC 2012') on the basis that the pleadings did not disclose a reasonable
H cause of action.

SALIENT FACTS

[2] At the material time, the first appellant was the construction manager
I and the second appellant was the managing director of Poratha Corp Sdn Bhd ('PCSB'). The respondent was a director of ATB Sdn Bhd ('ATB'). He was also the trading and marketing manager of Vitol Trading Malaysia Ltd.

[3] ATB and HQC Engineering Sdn Bhd ('HQC') entered into an

agreement for the construction of the 'ATB PU Project' at Tanjung Bin, Johor ('the project'). ATB was the employer and HQC was the main contractor of the project. PCSB was HQC's subcontractor for the project.

[4] ATB and PCSB entered into a letter of undertaking dated 13 July 2021 ('LOU'), pursuant to which ATB undertook to underwrite HQC's payments to PCSB.

[5] On 24 November 2021, a meeting was held between PCSB and ATB. The meeting was attended by the first appellant and Mr Brij Dogra for PCSB, and the respondent and ATB's staff for ATB. The purpose of the meeting was to discuss the procedures required by HQC for the processing and payment of PCSB's claims.

[6] On 25 November 2021, at around 9am, the respondent came to PCSB's site cabin and requested for a brief meeting with the first appellant to discuss an alleged discrepancy relating to an outstanding payment for the project. The meeting on 25 November 2021 ('the unscheduled meeting') was held at HQC's meeting room, which was located approximately 100metres from PCSB's site cabin.

[7] The first appellant contends that during the unscheduled meeting, he told the respondent that he did not have the mandate to discuss payments on behalf of PCSB and that the respondent should discuss the matter directly with the second appellant, who is PCSB's managing director.

[8] The first appellant alleges that the respondent, upon being informed that he should discuss the matters relating to payment directly with the second appellant, verbally assaulted and defamed the first appellant and disparaged the second appellant by using the following words: 'bastard, big shot, periya pudinggi, fuck, fucker, your boss is a bastard' ('the impugned words').

[9] Additionally, the first appellant claims that the respondent acted aggressively and violently by slamming his fist hard with force on the table and pushed the chairs in the meeting room, while continuously uttering the impugned words. He also claims that the respondent threatened PCSB's ability to conduct business in the United Arab Emirates with ATB.

[10] The first appellant contends that following the respondent's verbal assault, the first appellant left the meeting room. However, the respondent followed the first appellant and continued to utter the impugned words towards the first appellant in the presence of PCSB's workers, who were at a smoking shed located approximately 10metres away from HQC's meeting room.

[11] It is the first appellant's case that the PCSB workers at the smoking shed witnessed the incident and heard the impugned words uttered by the respondent against him.

[12] On 24 February 2022, the appellants filed an action for defamation against the respondent at the Johor Bahru High Court. In their SOC, the appellants contend that the impugned words were uttered, spoken and published by the respondent and that the words were defamatory in nature.

[13] On 18 May 2022, the respondent filed the application in encl 9 to strike out the appellants' SOC under O 18 r 19(1)(a) and O 78 r 3 of the ROC 2012 on the grounds, inter alia, that the appellants failed to show any actionable claim based on the impugned words; there were no particulars of publication to third parties; and the third parties who allegedly heard the impugned words were not explicitly identified in the SOC.

HIGH COURT'S GROUNDS FOR ALLOWING ENCL 9

[14] At the conclusion of the hearing of the respondent's application in encl 9, the learned High Court judge found that:

(a) the impugned words were not defamatory as they were mere verbal abuse; and

(b) the impugned words were not published to third parties because the appellants did not plead in the SOC the identity of the PCSB workers who were in the smoking shed when the respondent uttered the impugned words towards the first appellant.

[15] By reason of his findings detailed in sub-paras [14](a) and (b) above, the learned High Court judge held that the appellants' pleadings did not disclose a reasonable cause of action for defamation against the respondent and struck out the pleadings in the SOC under O 18 r 19(1)(a) of the ROC 2012.

CAUSE OF ACTION FOR DEFAMATION

[16] The appellants' action against the respondent is for the tort of defamation for alleged slander by reason of the impugned words allegedly uttered by the respondent against the appellants on 25 November 2021 during and shortly after the unscheduled meeting, which impugned words were allegedly heard by the PCSB workers in the smoking shed.

[17] Under O 18 r 7(1) of the ROC 2012, the appellants are required to plead a statement in summary form of the material facts on which they rely for their claim. Where the words referred to in the pleadings are themselves

material, the appellants are required under O 18 r 7(2) to plead the precise words.

[18] As the appellants' action against the respondent is for slander and the appellants alleged the impugned words were used in the defamatory sense other than their ordinary meaning, they are required under O 78 r 3(1) of the ROC 2012 to give particulars of the facts and matters on which they rely in respect of such defamatory sense.

[19] Accordingly, in order to assess whether the pleadings in the SOC disclosed a reasonable cause of action for defamation, this court must first, consider what the necessary elements for an action in defamation are. Secondly, this court must ascertain whether the material facts required to establish all those elements were pleaded in the SOC.

What are the necessary elements of a cause of action in defamation?

[20] The necessary elements of a cause of action in defamation are: (a) the impugned words are defamatory; (b) the impugned words refer to the plaintiff; and (c) the impugned words are published. In *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315; [1989] 1 CLJ 152, Mohamed Dzaiddin J (as he then was) held:

> In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (a) the words are defamatory; (b) the words refer to the plaintiff; and (c) the words were published.

[21] Order 78 r 3 of the ROC 2012 applies to actions for libel or slander. It states:

> (1) *Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in respect of such sense.*
>
> (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.
>
> (3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged

A occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is
B made the defendant. (Emphasis added.)

[22] In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by
C the plaintiff at the time of publication, s 5 of the Defamation Act 1957 provides that it shall not be necessary for the plaintiff to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business. Section 5 of the Defamation Act 1957 reads:

D 5 Slander affecting official, professional, or business reputation

In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office,
E profession, calling, trade or business.

Did the appellants plead the requisite facts to establish the necessary elements for a cause of action in defamation?

F **[23]** In the SOC, the appellants pleaded, inter alia, the following:

(a) the impugned words uttered by the respondent against the appellants: see paras 29 and 46 of the SOC;

(b) the impugned words referred to the appellants: see paras 29 and 33 of the
G SOC;

(c) the impugned words were defamatory in nature in their natural and ordinary meaning, and by innuendo: see paras 47 and 50–52 of the SOC.

(i) particulars of the impugned words in its natural and ordinary
H meaning and by innuendo being defamatory in nature and constitutes actionable slander against the first appellant are pleaded in para 50 of the SOC; and

(ii) particulars of the impugned words in its natural and ordinary
I meaning and by innuendo being defamatory in nature and constitutes actionable slander against the second appellant are pleaded in para 51 of the SOC.

(d) the impugned words amounted to lower the appellants in the estimation of right-thinking members of society generally and exposed them to

hatred, contempt or ridicule and further injure the appellants' names and reputation: see para 53 of the SOC;

(e) the impugned words were published to third parties, namely the group of PCSB workers who were in the smoking shed: see paras 33 and 48–49 of the SOC; and

(f) the impugned words were published with malicious intention: see para 56 of the SOC.

[24] Additionally, the appellants had pleaded in para 58 of the SOC that the impugned words were calculated to disparage the first appellant's professional standing. They had also pleaded in para 61 of the SOC that the impugned words had affected the second appellant's standing as managing director of PCSB and had affected his professional standing and reputation.

[25] Further, the appellants pleaded in para 62 of the SOC that the impugned words had put their professional reputations to odium, contempt and scandal, and humiliation in the eyes of their clients, colleagues and subordinates. In para 63 of the SOC, the appellants pleaded that the impugned words were calculated to disparage the appellants in their respective office, profession, calling, trade or business.

[26] Accordingly, based on as the facts as pleaded on the face of the SOC, we find that the appellants had pleaded all the three elements necessary to establish a cause of action in defamation against the respondent.

OUR ANALYSIS AND FINDINGS

[27] Under O 18 r 19(1)(a) of the ROC 2012, a court may strike out any pleadings on the grounds that it discloses no reasonable cause of action.

[28] The law is settled that in an application under O 18 r 19(1)(a), courts may only consider the SOC on the face of it: it cannot take into account the merits of the plaintiff's claim or any of the evidence. Pursuant to O 18 r 19(2) no evidence is admissible on an application under O 18 r 19(1)(a). Order 18 r 19(2) reads:

19 Striking out pleadings and endorsements (O 18 r 19)

(2) No evidence shall be admissible on an application under subparagraph (1)(a).

[29] The Court of Appeal in *Abdul Rahim bin Abdul Hamid & Ors v Perdana Merchant Bankers Bhd & Ors* [2000] 2 MLJ 417; [2000] 2 CLJ 457 held:

In considering an application under O 18 r 19(1)(a), the court has to take into account

A *the statement of claim on the face of it and no consideration whatsoever shall be paid to the evidence in the form of these affidavits*. So long as the statement of claim discloses a reasonable cause of action, however weak the claim is, the claim cannot be struck off summarily. *At that stage of the proceedings, it is not for us or for the learned judge of the High Court to consider the merits of Carah's claim. On an application under O 18*
B *r 19(1)(a) the court has only to consider whether the statement of claim discloses a reasonable cause of action*. The well-established principle is that the court will not summarily strike out pleadings, except only in plain and obvious cases where the claim or counterclaim is plainly and obviously not sustainable. (Emphasis added.)

C **[30]** In *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 at p 44; [1993] 4 CLJ 7 at p 11 (SC), Mohamed Dzaiddin SCJ said:

This court as well as the court below is not concerned at this stage with the respective merits of the claims. But what we have to consider is whether the counterclaim
D discloses some cause of action and, likewise, whether the defence to counterclaim raises a reasonable defence. *It has been said that so long as the pleadings disclose some cause of action or raise some question fit to be decided by the judge, the mere fact that the case is weak and not likely to succeed at the trial is no ground for the pleadings to be struck out.* (Emphasis added.)

E

[31] Gopal Sri Ram JCA (as he then was) delivering the judgment of the Federal Court in *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113; [1996] 4 CLJ 716 said:

F When it is shown that there is a reasonable cause, however weak it is, the court should refuse the application.

[32] Hence, the question for the learned High Court judge, in considering the respondent's striking out application in encl 9, was whether the appellants'
G pleadings on the face of the SOC disclosed a reasonable cause of action for defamation. In doing so, he cannot consider the merits of the appellants' claim or the evidence in the affidavits filed by both parties.

[33] As discussed above, on the face of the pleadings in the SOC, we find
H that the appellants had pleaded the requisite facts to establish all the three elements necessary for a cause of action in defamation. They had pleaded that the impugned words: (a) were defamatory; (b) referred to the appellants; and (c) were published. Whether or not the appellants will succeed in proving the facts pleaded depends on the evidence adduced during the trial of the action: it
I is not for the court's consideration in an application for striking out under O 18 r 19(1)(a).

[34] However, the learned High Court judge, as is evident from his written grounds of judgment, instead of just considering whether the appellants'

pleadings in the SOC disclosed a reasonable cause of action in defamation, undertook a minute analysis of the merits of the appellants' claim and concluded solely based on the pleadings that two of the three elements of the tort of defamation pleaded in the SOC were 'unsustainable'. Based on this conclusion, the learned judge held that the appellants have no reasonable cause of action in defamation against the respondent and struck out the pleadings in the SOC.

[35] On the first element, namely that the impugned words were defamatory, the learned judge said in para [21] of his judgment:

> [21] In our present case, after carefully scrutinising the impugned words in their natural and ordinary meaning and I find that the words 'bastard, big shot, periya pudinggi, fuck, fucker, your boss is a bastard' allegedly uttered by the defendant are clearly not defamatory albeit undeniably abusive. There is nothing in the impugned words that could be calculated to defame the plaintiffs nor expose the plaintiffs to hatred, ridicule or contempt in the mind of a reasonable man. It is no doubt that the impugned words are amongst the nasty words more often than not uttered by a person in the midst of anger but not all nasty words are defamatory. As long as the nasty words do not defame or impute the moral character, credibility and integrity of the person whom the words are uttered to, they are not defamatory.
>
> ...
>
> [23] In light of the above, I find the impugned words are not defamatory and the first element in the defamation suit is unsustainable.

[36] With respect to the learned High Court judge, based on the legal principles established in a long line of Federal Court, Supreme Court and Court of Appeal cases, the function of a court in an application to strike out pleadings under O 18 r 19(1)(a) is to consider whether the pleadings disclosed a reasonable cause of action. It is not for a court to consider in a striking out application whether the plaintiff has proven the facts pleaded in the said pleadings.

[37] Moreover, because a court is prohibited from considering the merits of the claim or any of the evidence in an application under O 18 r 19(1)(a), it would be impossible for a court to determine, when considering such an application, whether a plaintiff has proven his pleaded case.

[38] Whether or not the appellants succeed in proving their pleaded case is a matter to be decided by the court after considering the evidence adduced in court during trial. As held by the Supreme Court in *Bandar Builder* and the Federal Court in *Owen Sim Liang Khui*, the fact that a plaintiff's case is weak is no reason for courts to strike out his pleadings.

[39] Accordingly, we find that the learned High Court judge fell into error and was plainly wrong in considering the merits of the appellants' pleading that the impugned words are defamatory in an application for striking out under O 18 r 19(1)(a) of the ROC 2012.

[40] As for the second element that the impugned words referred to the appellants, the learned High Court judge found that the impugned words did refer to the appellants and that this second element is prima facie fulfilled. He said in paras 24–25 of his grounds of judgment:

> [24] I find there is no doubt that the impugned words referred to the plaintiffs as the *defendant was very angry at that time with the plaintiffs after be*ing unsatisfied [sic] with the explanation given by the first paintiff.
>
> [25] Hence, this element is prima facie fulfilled.

[41] In concluding that the impugned words referred to the appellants, the learned judge failed to consider the respondent's pleadings in his statement of defence, where he denied having uttered the impugned words and had put the appellants to strict proof. In the face of the respondent's express denial and without the appellants proving their case at trial, it is not apparent to us how the learned judge was able to conclude that the respondent had uttered the impugned words and that the words referred to the appellants.

[42] For the third element, ie publication of the impugned words, the law is settled that to constitute publication, the impugned words must have been communicated to at least one third party ie a person or group of persons other than the plaintiff: see *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173; [1988] 1 CLJ 771 (HC), followed in *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242 (CA).

[43] Where the alleged publication is to a specific individual or organisation, the plaintiff must plead the name of the specific individual or organisation: see *S Pakianathan v Jenni Ibrahim*; *Abu Samah bin Omar v Zainal bin Montel* [2004] 5 MLJ 377; [2003] 1 LNS 501.

[44] However, where the alleged publication is to a specific group of persons, it is sufficient for the plaintiff to plead that the defamatory words were published to the said specific group of persons. It is not necessary for the plaintiff to plead the names of all the members of the group of persons who had read or heard the defamatory words: see *Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal* [2011] SGCA 63; [2012] 1 SLR 506 (CA, Singapore); *Lee Kok Choy v Leong Keng Woo* [2022] SGHC 3; [2022] 4 SLR 1253 (HC, Singapore).

[45] Doris Chia in her book *Defamation Principles and Procedure in Singapore and Malaysia,* LexisNexis, 2016 at para 5.18 summarised the legal principle relating to publication to a specific group persons as follows:

> 5.17 Where publication is to a specific group of persons, for example, members of a club or associations, there is no need to name each member, but it will be necessary to plead and prove that persons in that group received or read the publication or heard the speech ...

[46] In *Chan Cheng Wah Bernard & Ors v Koh Sin Chong Freddie and another appeal*, the Singapore Court of Appeal held where the alleged publication is to a specific group of persons, there is no need to name each member of the group but it is necessary to plead and prove that the persons in the group read or heard the defamatory words. In *Lee Kok Choy v Leong Keng Woo*, the Singapore High Court held:

> [64] There is no need for the plaintiff to plead how he came to know about the republication to the MRL Board. This is a matter of evidence. *There is also no need to specify precisely how many persons from the MRL Board the Alleged Defamatory Statements were republished to and their exact identities, since the category of persons is sufficiently identified*. It simply refers to the directors of MRL ... (Emphasis added.)

[47] Both these Singapore cases, which is of persuasive authority on this court and the High Court, reiterated the legal principle that as long as the specific group of persons are sufficiently identified in the pleadings, there is no need to plead their exact names and identities.

[48] In summary, the requirements in pleading publication to 'a specific person' versus publication to 'a specific group of persons' are as follows:

(a) where a plaintiff alleges publication to 'a specific person', the plaintiff must name and identify the reader or listener of the defamatory words in his pleadings; and

(b) where a plaintiff alleges publication to 'a specific group of persons', the plaintiff must plead publication of the defamatory words to the specific group of persons. He does not have to plead the names and identities of the persons in the group.

[49] In this case, the appellants had pleaded that the impugned words were published to a specific group of persons, namely, the PCSB workers who were in the smoking shed when the respondent allegedly uttered the impugned words.

[50] Accordingly, we find that the requirement to plead publication of the

impugned words to a specific group of persons is met by the appellants in their pleadings.

[51] Nonetheless, the learned High Court judge found because the appellants 'did not elaborate the full identities' of the group of PCSB workers who were in the smoking shed, this third element of publication was 'unsustainable'. The learned judge said in paras 34–35 of his grounds of judgment:

> [34] It is my considered view that there cannot be defamation of the plaintiffs in the absence of full detail about the involvement of a third party. A mere statement in the plaintiffs' pleading that a group of employees overheard the impugned words without elaborating their full identities to substantiate the allegation is not sufficient to support the plaintiffs' averment that the element of communication to a third party is sustainable.
>
> [35] In the upshot, the third element in this defamation suit is unsustainable.

[52] It is not clear to us what the learned judge meant by the third element being 'unsustainable'. He had similarly found that the first element was 'unsustainable': see para 23 of the grounds of judgment.

[53] The test for striking out pleadings is not whether one of the elements in a cause of action as pleaded is 'unsustainable'. The correct test — as expounded by the Supreme Court in *Bandar Builder* — before a court can strike out pleadings under O 18 r 19(1)(a), (b), or (c) is that a plaintiff's cause of action as pleaded is 'obviously unsustainable'.

[54] In considering an application to strike out pleadings under O 18 r 19(1)(a), a judge must assess the pleadings as a whole and conclude that on the face of the pleadings there is no reasonable cause of action and the action is 'obviously unsustainable' before he can summarily strike out the pleadings under O 18 r 19(1)(a).

[55] Based on the applicable law, we find that it was plainly wrong for the learned High Court judge to have considered the merits of the case during an application for striking out under O 18 r 19(1)(a) of the ROC 2012. Further, it was plainly wrong of the learned judge to have struck out the pleadings in the SOC under O 18 r 19(1)(a) based on his assessment of the merits of the case and his findings that two of the three elements of the cause of action for defamation in the pleadings are 'unsustainable'.

DECISION

[56] Therefore, for the reasons above, we find that the learned High Court judge fell into error and was plainly wrong in holding that the appellants' pleadings in the SOC did not disclose a reasonable cause of action and for striking out the pleadings.

[57] Accordingly, at the conclusion of the hearing of this appeal, we allowed the appellant's appeal against the High Court's decision and set aside the High Court order dated 30 August 2023.

[58] Costs of RM10,000 here and below are to be paid by the respondent to the appellants, subject to allocatur.

Appeal allowed; and High Court's decision set aside.

Reported by Ashok Kumar